

INDEPENDENT CONSUMER ADVOCATE

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QUARTERLY REPORT FOR APRIL-JUNE 2024

This quarter's activity centered on several issues which could have long term implications. The first issue involved the recording of committee and board meetings. The issue was brought to the Advocate in its consumer meeting last Fall. The advocate in turn requested it be placed on the Governance Committee agenda. The Governance Committee discussed the issue during two meetings with vigorous debate. The motion to recommend to the full Board that meetings be recorded failed on a tie vote. The issue is likely to resurface at a full Board meeting in the Fall.

There was general agreement that legally CMEEC meetings are hybrid meetings and as such are not required to be recorded. The debate centered on the pros and cons of such recordings. Those in favor cited transparency and accuracy. Those opposed cited additional administrative burdens and fear that the recordings could be used against CMEEC in some unspecified way.

Interestingly, the discussion about recording meetings was held in executive session over the objection of the Advocate and some Committee members. The basis for the executive session was that there is a memo from counsel outlining the legal requirements surrounding recording meetings and therefore the discussion would involve attorney-client communications.

This argument, in the view of the Advocate, puts form over substance. There was no pending or threatened litigation. There were no settlement discussions which needed to be kept confidential. There was no pending negotiation. No one seriously questioned the law governing recording. The discussion centered, as described above, on what was the best policy for CMEEC. If the 'attorney-client privilege' exception to the open meeting requirements is invoked here, the Advocate is very concerned that it will be used as an excuse to conduct other business in executive session which in fact should be conducted in open meetings. The attorney-client privilege exception to the open meeting requirement is meant to be a shield. Here it was used as a sword.

While the above issues might be viewed as ancillary to CMEEC's mission of providing the lowest electricity cost to its members, they both have long term implications for how CMEEC operates in the future. CMEEC has made major strides in putting the unfortunate episodes of several years ago behind it. It must continue to move forward in its transparency and responsiveness.

The third issue of long term significance which came up this quarter involves whether CMEEC should continue to maintain a certain level of equity in its capital structure. Currently CMEEC maintains a 20% equity component and its financial plan contemplates such a level. At the annual Delegation meeting at which equity levels are discussed, CMEEC staff raised the issue of whether it was appropriate, necessary, or desirable for CMEEC to maintain equity given its non-profit cooperative legal status. The Advocate has advised staff that in his opinion, maintaining a fixed equity level was not a financial goal that served the interests of the ultimate consumers of CMEEC power. At the same time, circumstances might dictate that a certain level of reserves be maintained to meet contingencies. For example, CMEEC currently includes as an asset on its balance sheet an amount of money, approximately \$5million, representing incurred but not billed expenses related to legal expenses associated with the 'Derby' litigation. This treatment is appropriate given that CMEEC is seeking recovery from its insurance companies and if successful, the amount may not need to be billed. Having reserves to offset this potential cost is not inappropriate.

In addition to the foregoing the Advocate attended the committee meetings and the board meetings which took place during the quarter. Next quarter, the focus is likely to begin the annual shift to budget issues.

Respectfully Submitted

The Independent Consumer Advocate

By David Silverstone

July 8, 2024